

United States Senate

WASHINGTON, DC 20510

February 10, 2014

124

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Chairman Wheeler,

We are writing to urge you to move quickly to protect Internet users and the open Internet in light of the recent decision by the United States Court of Appeals District of Columbia on net neutrality. The Court's ruling threatens the freedom of innovators to compete on an open, neutral platform. Without rules to preserve fair competition – rules to bar Internet networks operators from discriminating against one content provider over another – deep-pocketed incumbents will have the ability to enter into arrangements with Internet Service Providers that disfavor the delivery of their competition.

We urge you to quickly adopt enforceable rules to prevent the blocking and discrimination of Internet traffic. These rules must stand on strong legal footing to withstand judicial scrutiny. Without such rules in place, Internet Service Providers are prone to act as gatekeepers of the Internet, controlling access by blocking or throttling certain content and thereby limiting the opportunities for innovation, speech, and commerce.

The Court expressed no opinion on the merits of the FCC's Open Internet Order, focusing its attention instead on the question of legal authority. Notably, the Court deferred to the FCC's substantive judgments, including that Internet openness encourages innovation and broadband deployment; that broadband providers have incentives to discriminate against edge providers; and that the Open Internet rules would not harm investment in infrastructure.


In reaching its decision, the Court rightly pointed out that when Congress enacted the Telecommunications Act of 1996, the FCC had already been subjecting Internet providers to common carrier obligations. The January 14, 2014 decision states that, "one might have thought, as the Commission originally concluded, that Congress clearly contemplated that the Commission would continue regulating Internet providers in the manner it had previously."

We respect your desire to take a careful approach. The Commission must hear from all stakeholders as it weighs how to correct the issues raised by the Court. While it would be premature to reject any particular path forward, we urge you to act with expediency. Consumers,

entrepreneurs and innovators deserve to know their right to view or use the content and services of their choice online will be protected.


Sincerely,



Ron Wyden
U.S. Senator

Jeff Merkley
U.S. Senator

Edward J. Markey
U.S. Senator

Al Franken
U.S. Senator

Richard Blumenthal
U.S. Senator



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

April 18, 2014

The Honorable Richard Blumenthal
United States Senate
702 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Blumenthal:

Thank you for your letter expressing concern about the effect of the recent D.C. Circuit Court of Appeals decision in *Verizon v. FCC*. I share your view that the Internet must remain an open platform for innovation, entrepreneurship, and free speech.

In its opinion, the D.C. Circuit ruled that the Commission has the legal authority to issue enforceable rules of the road to preserve Internet freedom and openness, and it invited the Commission to act to preserve a free and open Internet. I intend to accept that invitation by proposing rules that will meet the court's test for preventing improper blocking of and discrimination among Internet traffic, ensuring genuine transparency in how Internet service providers manage traffic, and enhancing competition.

We are taking several actions toward that end. First, we have established a new docket – "Protecting and Promoting the Open Internet" (GN Docket No. 14-28) – that solicits public comment on issues raised in the court's opinion. I am enclosing a copy of the Public Notice establishing the new docket for your information.

Additionally, I will recommend to my fellow Commissioners that the FCC seek comment through a formal rulemaking on the specific rules for preserving and protecting the open Internet. First, we need to enforce and enhance the transparency rule that the court affirmed. The transparency rules require that network operators disclose how they manage Internet traffic, which gives edge providers the technical information they need to create and maintain their products and services.

Second, we need to fulfill the "no blocking" goal. Consistent with the court opinion, we will carefully consider how we can ensure that edge providers are not unfairly blocked, explicitly or implicitly, from reaching consumers, and that consumers can continue to access any lawful content and services they choose. Third, we need to fulfill the goals of the nondiscrimination rule by considering how Section 706 might be used to protect and promote an open Internet consistent with the D.C. Circuit's opinion and its earlier affirmance of the Commission's *Data Roaming Order*.

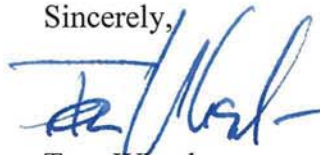
I also intend to keep on the table the Commission's option of addressing these issues under Title II of the Communications Act. As the court noted, as long as Title II – with the ability to reclassify Internet access service as a telecommunications service – remains a part of the Communications Act, the Commission has the ability to utilize it if warranted. In light of the D.C. Circuit's finding that the Commission has authority to issue new rules under Section 706 and the ongoing availability of Title II, the Commission will not seek judicial review of the *Verizon* decision.

I am pleased that major Internet service providers have indicated that they will continue to honor the safeguards articulated in the *Open Internet Order*, and that Verizon does not intend to appeal the D.C. Circuit's decision. Abiding by these safeguards is the right and responsible thing to do, and will continue to provide protection for the open Internet until new rules are put in place.

I also want to look for opportunities to enhance Internet access competition. As I have stated, one obvious candidate for close examination (which was raised in Judge Silberman's separate opinion in the *Verizon* case) is legal restrictions on the ability of cities and towns to offer broadband services to consumers in their communities.

Preserving the Internet as an open platform for innovation and expression while providing certainty and predictability in the marketplace is an important FCC responsibility. I appreciate your recognition of this fact and your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

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Tom Wheeler

Enclosure



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

April 18, 2014

The Honorable Edward Markey
United States Senate
218 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Markey:

Thank you for your letter expressing concern about the effect of the recent D.C. Circuit Court of Appeals decision in *Verizon v. FCC*. I share your view that the Internet must remain an open platform for innovation, entrepreneurship, and free speech.

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Tom Wheeler

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
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April 18, 2014

The Honorable Jeff Merkley
United States Senate
107 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Merkley:

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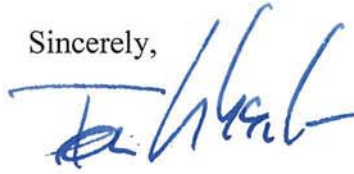
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Tom Wheeler

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FEDERAL COMMUNICATIONS COMMISSION
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OFFICE OF
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April 18, 2014

The Honorable Ron Wyden
United States Senate
223 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Wyden:

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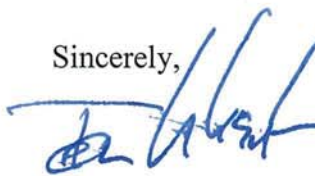
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April 18, 2014

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United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

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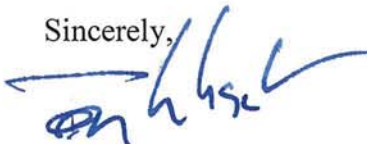
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